

Best Practice Recommendations in Fair Housing Lending Cases

Improving Equal Lending Opportunities



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Eliminating Lending Discrimination: Best Practices for creating access to financing housing in communities

- HUD's Strategic Plan for Fiscal Year 2014-2018
- HUD's mission: "To create strong, sustainable inclusive communities and quality, affordable homes for all."

HUD's 4 Strategic Goals

3

- 1. Strengthen the Nation's Housing Market to Bolster the Economy and Protect Consumers***
- 2. Meet the Need for quality, Affordable Rental Homes**
- 3. Use Housing As a Platform to Improve Quality of Life**
- 4. Build Strong, Resilient, and Inclusive Communities**

***Removing discriminatory elements**

1. Strengthen the Nation's Housing Market to Bolster the Economy and Protect Consumers

1A: Establish a sustainable housing finance system that provides support during market disruptions, with a properly defined role for the U.S.

Government

1B: Ensure equal access to sustainable housing financing and achieve a more balanced housing market, particularly in underserved communities

1C: Restore the Federal Housing Administration's financial health, while supporting the housing market recovery and access to mortgage financing.

Nebraska Fair Housing Act 20-320

Transaction related to residential real estate;
discriminatory practices prohibited.

(Equivalent to the federal Fair Housing Act
Section 805. [42 U.S.C. 3605])

Unlawful to engage in **housing transactions** where such transactions discriminate based on race, color, religion, sex, disability, familial status, or national origin

The **definition of “transaction”** under the law includes but not limited to:
Making or purchasing of loans or providing other financial assistance for purchasing, constructing, improving, repairing, or maintaining a dwelling that is secured by residential real estate or the selling, brokering, or appraising of residential real property

Some practices that are in violation of the law:

1. Not providing information about available home loans, or application requirements, or steps for applying, or how applications would be reviewed and approved or rejected, or giving false information
2. Making a statement indicating a preference or limitation with the intent to limit access to what is available
3. Limiting or denying services, or facilities, or privileges in connection with the loan
4. Making statements that would discourage a person from inquiring about a loan.
5. Presenting conduct in effect would tend to make a loan unavailable

Some discriminatory Terms and Conditions in the making of a loan when the protected class membership is a factor

1. Using a different policy, or practice, or procedure in evaluating or determining credit-worthiness
2. Determining the type of loan, or fixing the amount, interest rate, or duration
3. Using different standards of qualification, or different processing
4. Not providing the same information or loan as provided to non-class members

Four Areas of Lending Discrimination we will cover:

8

- A. **Denials**: an applicant's loan was denied due to the applicant's protected class
- B. **Redlining**: an applicant's loan denied based on the location of the dwelling
- C. **Unfavorable Terms**: less favorable terms of the loan were due to the applicant's protected class membership
- D. **Reverse Redlining**: less favorable terms of the loan were due to the location of the dwelling

A. Denials: an applicant's loan was denied

due to the applicant's protected class

A person may complain that they are in the protected class (race, color, religion, sex, disability, familial status, or national origin), and they applied and qualified for a loan from the person or other entity who engages in making loans or providing financial assistance in residential real estate, but were denied/rejected for the loan because of their protected class. They may also complain that persons with qualifications similar to them but not of their protected class were approved for a loan.

Bank of America Lending Discrimination Against Women on Maternity Leave

Wells Fargo Lending Discrimination Against Women on Maternity Leave

Facts of the Case

Settlement

Applying the Rules/Best Practices

Discussion of the case and outcome: Bank of America case

Discussion

The lender used pregnancy and maternity leave as reasons to deny a loan.

- a. Case #1: A couple from California said that Bank of America moved back the closing date on refinancing their mortgage because the woman was on maternity leave.
- a. Case #2: A couple from Texas said that Bank of America refused to consider the woman's employment income and denied the loan because she was on maternity leave, and when the couple challenged the loan officer, the loan officer changed the reasons for denying the loan.

Outcome

In the first case, the couple received \$25,000.00 and the Bank revised its policies. In the second case, the couple received \$15,000.00 and their real estate agent received \$5,000.00.

From a HUD Press Release from October 9, 2014, No. 14-124:

\$5 Million Settlement of Wells Fargo case

Settlement resolves complaints filed by HUD and six families from Nevada, **Nebraska**, Texas, Arizona, and California. Complaints alleged the underwriting policy for its FHA-insured home mortgage loans and the implementation of its policy violated the Fair Housing Act by discriminating against women on maternity leave, by making loans unavailable based on sex and familial status; or by forcing women applicants to sacrifice their maternity leave and return to work prior to closing on their loan; and by making discriminatory statements to and against women who were pregnant or who had recently given birth.

Women applicants who sacrificed their maternity leave in order to ensure that their loan closed reported emotional distress at the loss of time with their infants and complications that arose in finding emergency child care and establishing the ability to nurse.

Outcome to Wells Fargo Case

1. Distribute of a total of \$165,000 among six affected families
2. Create a fund with at least \$3.5 million to compensate other Wells Fargo applicants who experienced discrimination because they were pregnant or on maternity leave when they applied for a loan
3. Pay as many as 175 claimants \$20,000 each. If there are more than 175 successful claimants, Wells Fargo will replenish the fund with \$1.5 million, and pay each of the next 75 claimants \$20,000 each. Claimants beyond 250 will share a prorated share of \$5 million.
4. Change its underwriting guidelines when it comes to evaluating mortgage loan applications from those on maternity leave, ensuring they are not discriminatory.

Best Practices recommendations

1. Fair housing training to be provided to employees and management staff
2. Revise policies to allow applicants on parental leave to be approved for mortgage loans without first returning to active employment

B. Redlining: an applicant's loan denied based on the location of the dwelling

A person may complain that they applied and qualified for a loan from the person or other entity who engages in making loans or providing financial assistance in residential real estate, to secure a dwelling in an area concentrated with persons in a protected class, but were denied/rejected for the loan because of the location of the dwelling. They may also complain that persons with similar qualifications for dwelling in areas not concentrated with persons in the protected class, were approved for loans.

Consumer Financial Protection Bureau and United States v. Hudson City Saving Bank, F.S.B. (D.N.J.)

Filed September 24, 2015, and consent order November 4, 2015

Facts of the Case

Settlement

Applying the Rules/Best Practices

Discussion of the case and outcome

Discussion

For the period 2009 to 2013, Hudson City Savings Bank did not provide its home mortgage lending services to majority black and Hispanic neighborhoods on an equal basis as it provided those services to predominantly white neighborhoods, in New Jersey, New York, Connecticut, and Pennsylvania.

Outcome

1. \$25 million to a loan subsidy fund to increase credit the bank can extend to the redlined areas.
2. Invest \$2.25 million for advertising, outreach, financial education, and community partnership
3. Open 2 full-service branches in neighborhoods
4. Increase the number of loan officers dedicated to majority black and Hispanic neighborhoods
5. Develop and implement a compliance management system and training curriculum on fair lending
6. Create a long-term plan to increase lending in redlined areas
7. Pay civil penalty of \$5.5 million

United States v. Eagle Bank and Trust Co. of Missouri (E.D.Mo.)

Filed September 29, 2015

Facts of the Case

Settlement

Applying the Rules/Best Practices

Discussion of the case and outcome

Discussion

The FDIC referred this case to the Attorney General when based on the information they collected during their examination of the practices, there appeared to be a pattern and practice of denying or discouraging lending opportunities to residents in census tracts that had a majority of African-Americans, based on the racial compositions in those tracts. The area in question was St. Louis City north of Interstate 64, including Ferguson and Florissant.

Outcome

Settlement/Consent decree to avoid litigation and ensure that its products will be made available and marketed to majority-African American census tracts on no less favorable a basis than in majority-white census tracts.

Best Practices

1. Create a loan subsidy fund to increase credit the bank can extend to the redlined areas.
2. Invest in advertising, outreach, financial education, and community partnership in redlined areas
3. Open full-service branches in neighborhoods
4. Increase the number of loan officers dedicated to majority black and Hispanic neighborhoods
5. Develop and implement a compliance management system and training curriculum on fair lending
6. Create a long-term plan to increase lending in redlined areas

C. Unfavorable Terms: less favorable terms of the loan were due to the applicant's protected class membership

An applicant for a loan complains that because of their protected class membership (race, color, religion, sex, disability, familial status, national origin), they applied and qualified for a loan and the person or entity engaged in making the loan offered the person a loan on **grossly less favorable terms**, because of the applicant's protected class membership, or because the loan provider's intent is to target persons in that protected class for the treatment.

United States and Consumer Financial Protection Bureau v. Provident Funding Associates (N.D.Cal.)

filed May 28, 2015

Definition:

Charging grossly unfavorable terms includes:

- a. Charging undisclosed, duplicative or improper rates or fees
- b. Altering previously negotiated or standard terms
- c. Employing inadequate verification procedures or standards for financial eligibility

Discussion of the case and outcome

Discussion

Between 2006 and 2011, Provident engaged in a pattern or practice of discriminating against minorities.

Evidence showed that African-American and Hispanic borrowers were charged more in total broker fees.

Outcome

Consent Order:

- (1) \$9 Million in monetary damages to aggrieved borrowers
- (2) Standard fair lending training
- (3) Standard record keeping and reporting requirements

Best Practice Recommendations

1. Fair housing training
2. Standard training in loan handling
3. Standard record-keeping
4. Standard reporting requirements

United States of America v. Sage Bank (D. Mass)
Case No. 1:15-cv-13969
(In the United States District Court District of
Massachusetts)

Facts of the Case

Settlement

Applying the Rules/Best Practices

Discussion of the case and outcome

Discussion

Around April 2011, Sage Bank adopted a Minimum Base Price (“MBP”) system to price residential mortgage loans sold on the secondary market to investors, and each loan officer was assigned a MBP—a net revenue target that the loan officer is expected to achieve on each loan they originate from a combination of interest rates and fee. The Bank allowed loan officers subjective discretion without documentation to price loans higher than their MBPs unrelated to objective credit factors; did not require management overview to do so though management was needed to price a loan below the MBP. This resulted in loan prices that were higher than what the objective credit characteristics of borrowers dictated. As a result, African-American and Hispanic borrowers were served disproportionately by loan officers with higher MBPs than loan officers serving white borrowers, and the practices resulted in African-American and Hispanic borrowers paying more for their loans, and earning the Bank gaining higher revenue on these loans, not based on credit factors.

Outcome:

Consent Order

Best Practices Recommendations

1. Eliminate target based pricing policy
2. Implement a mortgage loan pricing policy that eliminates discretion
3. Implement a loan pricing policy that establishes uniform pricing based on a certain set of established criteria
4. Have a fair lending monitoring process by using experiences of a compliance officer
5. Use independent consultants or software to monitor performance for pricing and possible disparities

D. Reverse Redlining: less favorable terms of the loan were due to the location of the dwelling

An applicant wants to purchase or improve a dwelling in an area that has a concentration of persons in the protected class (race, color, religion, sex, disability, familial status, national origin) and applied and was qualified for a loan, but was offered a loan on grossly less favorable terms because of the location of the subject dwelling, or because the person or business is in the practice of targeting minority communities and steering them into bad loans.

National Community Reinvestment Coalition v. NovaStar Mortgage, Inc.

Civil Action No. 07-861 (RCL) March 27, 2009

and NCRC v. Aegis Mortgage (filed with HUD)

Facts of the Cases

Settlement

Applying the Rules/Best Practices

Discussion of the case and outcome

Discussion

It was alleged that NovaStar Mortgage, Inc. and Aegis Mortgage refused to originate or securitize loans secured by properties on Indian reservations, group homes, or row houses. It was also alleged they published and maintained written underwriting guidelines restricting these same properties as collateral for a loan.

These policies and practices, if proven, constitute disparate impact discrimination against Native Americans, minorities, and persons with disabilities.

Outcome

Over \$1 Million Dollars paid to resolve claims

Best Practice Recommendations

1. Revise underwriting policies that violate the Housing Act on improved real property
 - Not exclude a row home owner for any loan products
 - Not restrict the loan as long as it is made for a “consumer purpose”.
 - Not restrict loans solely for the reason the property is located on Native American tribal land
 - Not restrict lending when the value of the property is less than the specified amount
2. Train officers in the new non-discriminatory practices and policies
3. Publicly announce the new policies and practices
4. Monitor compliance with the new policies

In monitoring for unfair lending practices or policies, look for any of these signs:

1. Pricing appears unfair
2. Loan agent makes bias remarks based on protected class membership or minimizes contact
3. The ancillary products/conditions attached to the loan are excessive in cost or burdensome
4. Debt to income ratios are not consistently applied by the loan officer
5. The loan officer imposes or waives pre-application fees
6. Deceptive advertising
7. Different channels of pricing
8. Different channels of referral
9. Non-routine servicing of the application

Disparate Impact

A theory of discrimination applied to the investigations of policies and practices of housing providers, housing lenders, and for any transaction related to housing

Disparate Impact is a theory of discrimination

When applied to the investigation of complaints, the investigator examines whether or not a facially neutral practice or policy of the housing provider had a discriminatory effect on a protected class membership group, and **the policy or practice cannot be justified, or the housing provider does not adopt an alternative policy or practice that would reduce or eliminate the discriminatory effect.**

Neutral policies or practices when applied, may disproportionately and adversely affect a particular protected class group

Department of Housing and Urban Development

Federal Register Volume 78 No. 32 February 15, 2013

24 CFR part 100

Implementation of the Fair Housing Act's Discriminatory Effects Standard; final rule

U.S. Supreme Court Decisions:

City of Edmonds, Petitioner v. Oxford House, Inc., et al

**Texas Department of Housing and Community Affairs v.
The Inclusive Communities Project, Inc.**

Federal Register Volume 78 No. 32 February 15, 2013 24 CFR part 100

Implementation of the Fair Housing Act's **Discriminatory Effects** Standard; final rule

The Elements of a Case of Disparate Impact

The charging party alleges that a practice or policy results in, or would predictably result in, a discriminatory effect on on the basis of a protected class.

If the charging party proves this case, the burden goes to the respondent to prove that the challenged practice is necessary to achieve one or more of its substantial, legitimate, nondiscriminatory interests. If the respondent satisfies this burden, then the charging party may still establish liability by proving that the substantial, legitimate, nondiscriminatory interest could be served by a practice that has a less discriminatory effect.

City of Edmonds v. Oxford House, Inc., et al

Oxford House opened a group home in the City of Edmonds for 10-12 adults recovering from alcoholism and drug addiction, located in a neighborhood zoned for single family residences. The City of Edmonds issued criminal citations to the owner and a resident of the house, stating they violated a zoning code rule that defines who may live in a single family dwelling unit. The zoning code states that occupants must compose a “family” and “family” meant, “an individual or two or more persons related by genetics, adoption, or marriage, or a group of five or fewer persons who are not related by genetics, adoption, or marriage.”

Texas Department of Housing and Community Affairs v. The Inclusive Communities Project, Inc.

No. 13–1371. Argued January 21, 2015—Decided June 25, 2015

On June 25, 2015, the Supreme court ruled that disparate impact claims are cognizable under the Fair Housing Act. Prior to that date, the courts had consistently ruled in favor of applying disparate impact theory to zoning ordinances, reasonable modification requests, domestic violence issues of prospective or current tenants, and discriminatory lending transactions.

Case Study: Nebraska

Facts: Group Home for developmentally disabled residents alleges the zoning ordinance disproportionately harms the protected group.

Process: Complaint filing, investigation

Outcome: Municipal and County changes to the zoning ordinances

Various towns have zoning classifications:

- R-1 single family homes
- R-2 single family homes and duplexes
- R-3 medium density residential
- R-4 high density residential

Mechanisms for obtaining special permission to use property in a way that is prohibited by the zoning ordinance:

1. Conditional use-an applicant may be allowed in a particular district with special permission from the proper authorities. However, if the property is sold, the new owner must obtain a permit if the new owner want to use the property in the same way.
2. Variance-applicant shows that not being able to use the land in the way sought imposes a hardship
3. Re-zoning-changing the classification

Concerns of the public:

Conditional use permits were needed for group homes located in R1, R2, R3, and R4 residential housing.

Traffic flow

Parking

Protection of the “investment” of other homeowners

Owner of the property would not live there

Need for upsized sewer and water lines

Safety/health risk posed by substance abuse or mental health problem occupants

Outcome

Family shall mean a household head and one or more persons related to the head by blood, marriage, adoption, guardianship or duly authorized custodial relationship living together in a single dwelling, or no more than 5 unrelated persons living together in a single dwelling

Group Care Home shall mean a home which is operated under the auspices of an organization which is responsible for providing social services, administration, direction, and control for the home which is designed to provide twenty-four hour care for individuals in a residential setting.

Group Home shall include both Group Care Home and Group Home for the Disabled. Group homes shall be classified by size as follows:

Group Home(Small) shall mean a home designed to accommodate no more than 5 persons and shall be allowed in all zoning districts that permit dwelling units in the same manner as other dwelling units. These homes shall be built to no less than an R3 residential standard as defined by the International Building Code.

Group Home(Medium) shall mean a facility designed to house between 6 and 16 persons and shall require a conditional use permit in the LLR, R1, R2, R3 and R4 Districts and permitted in the RO, B1, B2, B3 and M3 zoning districts. These facilities shall be built to no less than an R4 residential standard as defined by the International Building Code.

Group Home(Large) shall mean a facility designed to house more than 16 persons and shall be permitted in the RO, B1, B2, B3, and M3 zoning districts. These facilities shall be built to an Institutional standard as defined by the International Building Code.

Group Home for the Disabled shall mean a dwelling with resident staff shared by four or more handicapped persons who live together as a single housekeeping unit and in a long term, family-like environment in which staff persons provide care, education, and participation in community activities for the residents with the primary goal of enabling the residents to live as independently as possible in order to reach their maximum potential. As used herein, the term "disabled" shall mean having:

- A) A physical or mental impairment that substantially limits one or more of such person's major life activities so that such person is incapable of living independently;
- B) A record of having such an impairment; or
- C) Being regarded as having such impairment.

Handicap shall not include current, illegal use of or addiction to a controlled substance as defined in state statutes.

Other Examples of Policies and Practices that have a Disparate Impact on protected classes

- 1. Charging rent based on number of occupants rather than number of bedrooms**
- 2. Locating families with children in some buildings and not others**
- 3. Homeowner Associations not allowing modifications to the outside of a unit/building**
- 4. Limiting the weight of a service or companion animal**

Questions?